CITY OF EVERETT

ORDINANCE NO. 3396-14

An Ordinance Establishing School District Impact Fees for Residential Development in the City of Everett Based Upon School District Capital Facility Plans Required Under the Growth Management Act

Whereas the City Council finds the following:

1. The Growth Management Act requires that capital facilities needed to serve growth be in place within six years of development;
2. RCW 82.020.050 allows for the collection of impact fees for public facilities that are addressed by a capital facilities plan element of a comprehensive plan adopted pursuant to the provisions of RCW 36.70A.070;
3. Everett's Growth Management Comprehensive Plan includes a Capital Facilities Element that identifies capital facilities necessary to serve growth within the City's planning area, including public school facilities for the school districts that serve the City and its planning area;
4. The City's Comprehensive Plan Capital Facilities Element recognizes that the school districts that serve the Everett Planning Area are required to provide a Capital Facilities Plan through the *Snohomish County School Districts Capital Facilities Plan*;
5. The geographic boundaries of school districts serving children within the City and its planning areas are not co-extensive with the boundaries of the City or its planning area, but the school districts are required to, and do, consider planned development within the City and its planning area in the development of their respective capital facilities plans;
6. Snohomish County has established a system of school district impact fees for each school district through the County-wide *Snohomish County School Districts Capital Facilities Plan,* including school districts serving the City of Everett and its planning area;
7. The Snohomish County county-wide school district planning process requires that each school district collecting school impact fees provide an updated School District Capital Facilities Plan every two years, which is incorporated into the county-wide *Snohomish County School Districts Capital Facilities Plan*;
8. The Everett School District and the Mukilteo School District each participate in the county-wide process and each provide an updated school district capital facilities plan to Snohomish County for the purpose of compliance with the Growth Management Act, including the ability to collect impact fees necessary to support public school facilities to support growth within each school district;

9. The Everett School District and the Mukilteo School District both provide their updated capital facilities plans every two years to the City of Everett to be incorporated into the Capital Facilities Element of the City's Comprehensive Plan;
10. The capital facilities plans of each school district provide the basis for revisions to school impact fees collected for each district through the Snohomish County school impact fee program established in Snohomish County Code, which fees are estimated based on the projected capital needs for the entire school district for the successive 6-year period, including portions of each district located within the City of Everett;
11. The City of Everett has been collecting school mitigation fees through its environmental review process under the State Environmental Policy Act (SEPA);
12. The City wishes to provide a more uniform, predictable basis for collecting school district impact fees by establishing a GMA-based system, and to collect fees identical to those collected by Snohomish County as documented in the capital facilities plans for both the Everett School District and the Mukilteo School District;
13. The City of Everett has issued a Determination of Non-Significance, SEPA # 14-015.

WHEREAS, the City concludes the following:

1. Adoption of this Ordinance is consistent with State law governing impact fees, and with the City's Growth Management Comprehensive Plan;
2. This Ordinance promotes the public health, safety and welfare, and the best long term interests of the City.

NOW, THEREFORE, THE CITY OF EVERETT ORDAINS THE FOLLOWING:

Section 1. Purpose. The purposes of this Ordinance are:

A. to provide for a predictable and timely collection system of impact fees for eligible school districts providing services to students living within the City of Everett;
B. To help ensure that adequate school facilities are available to serve new growth and development; and
C. To require that new growth and development pay a proportionate share of the costs of new school facilities needed to serve new growth and development.

Section 2. Applicability. This ordinance shall apply to all residential development establishing a new dwelling unit, unless such residential dwelling unit has been the subject of a development application that:

A. previously paid school mitigation fees;
B. was approved under a SEPA process that established a school mitigation fee, for which the SEPA approval has not expired, and for which a building permit has not been issued; or

C. is for a building permit within a development approved prior to the effective date of this chapter, which was not subject to school mitigation fees under the State Environmental Policy Act, provided the building permit is not expired.

Section 3. Eligibility. Any district serving the City of Everett shall be eligible to receive school impact fees provided the district has submitted a current capital facilities plan for the district to Snohomish County and said capital facilities plan has been incorporated by reference into the Capital Facilities Element of the Snohomish County General Policy Plan.

Section 4. Establishment of school district impact fees. The City of Everett hereby adopts by reference the school impact fee schedule contained in the applicable school district's adopted capital facilities plan, as incorporated by the City in the Capital Facilities Element of its comprehensive plan. Each school district shall provide a copy of their adopted biennial capital facilities plan to the City within fifteen days after it is incorporated into the Snohomish County General Policy Plan. The City shall use the impact fee incorporated in the Snohomish County General Policy Plan, except as may otherwise be provided by this Ordinance.

Section 5. Impact fee limitations.

A. School impact fees shall be imposed for district capital facilities that are reasonably related to the development under consideration, shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the development, and shall be used for system improvements that will reasonably benefit the new development.

B. Except as otherwise provided in RCW 82.02.070.(3)(b), school impact fees must be expended or encumbered for a permissible use within ten years of receipt by the district.

C. To the extent permitted by law, school impact fees may be collected for capital facilities costs previously incurred to the extent that new growth and development will be served by the previously constructed capital facilities, provided that school impact fees shall not be imposed to make up for any existing system deficiencies.

D. A developer required to pay a fee pursuant to RCW 43.21C.060 for capital facilities shall not be required to pay a school impact fee pursuant to RCW 82.02.050 - .090 and this title for the same capital facilities.

Section 6. Impact fee schedule - exemptions.

The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low-income housing in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit a petition to the planning and community development director for consideration by the council prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060 (2) and include a requirement for a covenant to assure the project's continued use for low-

income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

Section 7. Credit for in-kind contributions.

A. A developer may request, and the planning and community development director may grant a credit against school impact fees otherwise due under this chapter for the value of any dedication of land, improvement to, or new construction of any capital facilities identified in the district's capital facilities plan provided by the developer. Such requests must be accompanied by supporting documentation of the estimated value of such in-kind contributions. All requests must be submitted to the department in writing prior to its determination of the impact fee obligation for the development. Each request for credit will be immediately forwarded to the affected school district for its evaluation and comment prior to a decision by the director. The director shall consider the school district comments in light of the consistency of the dedication, improvement or construction with the district's capital facilities plan and the impact to school district facilities from the proposed development.

B. Where a school district determines that a development is eligible for a credit for a proposed in-kind contribution, it shall provide the department and the developer with a letter setting forth the justification for and dollar amount of the credit, the legal description of any dedicated property, and a description of the development activity to which the credit may be applied. The value of any such credit may not exceed the impact fee obligation of the development unless requested by the school district and approved by the City's planning and community development director.

C. Where there is agreement between the developer and the school district concerning the value of proposed in-kind contributions, their eligibility for a credit, and the amount of any credit, the director may approve the request for credit and adjust the impact fee obligation accordingly, and require that such contributions be made as a condition of development approval. Where there is disagreement between the developer and the school district regarding the value of in-kind contributions, however, the planning and community development director may render a decision that can be appealed by either party pursuant to the procedures in EMC Chapter 15.24.

Section 8. SEPA mitigation and other review.

A. The City may condition or deny development approval pursuant to SEPA as necessary or appropriate to mitigate or avoid significant adverse impacts to school services and facilities, to assure that appropriate provisions are made for schools, school grounds, and safe student walking conditions, and to ensure that development is compatible and consistent with each district's services, facilities and capital facilities plan.

B. Impact fees required by this chapter shall constitute adequate mitigation for impacts on capital facilities identified in the district's capital facilities plan; except that nothing in this chapter prevents issuance of a determination of significance under SEPA and conditioning or denial of the project based on specific adverse environmental impacts identified during project review.

Section 9. Collection and transfer of fees.

A. School impact fees shall be due and payable to the City by the developer at the time of issuance of residential building permits for all developments. The City may make alternative arrangements with a school district for collection of impact fees, provided payment is made prior to the issuance of residential building permits for all developments.

B. Districts eligible to receive school impact fees required by this Ordinance shall establish an interest-bearing account and method of accounting for the receipt and expenditure of all impact fees collected under this ordinance. The school impact fees shall be deposited in the appropriate district account within ten (10) days after receipt, and the receiving school district shall provide the City with a notice of deposit.

C. Each district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the City that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

Section 10. Use of funds.

A. School impact fees may be used by the district only for capital facilities that are reasonably related to the development for which they were assessed and may be expended only in conformance with the district's adopted capital facilities plan.

B. In the event that bonds or similar debt instruments are issued for the advance provision of capital facilities for which school impact fees may be expended, and where consistent with the provisions of the bond covenants and state law, school impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the capital facilities provided are consistent with the requirements of this title.

C. The responsibility for assuring that school impact fees are used for authorized purposes rests with the district receiving the school impact fees. All interest earned on a school impact fee account must be retained in the account and expended for the purpose or purposes for which the school impact fees were imposed, subject to the provisions of Section 11 of this Ordinance.

Section 11. Refunds.

A. School impact fees not spent or encumbered within ten years after they were collected or such longer period as may be authorized pursuant to RCW 82.02.070(3)(b) shall be refunded

pursuant to RCW 82.02.080(1). For purposes of this chapter, "encumbered" means school impact fees identified by the district to be committed as part of the funding for capital facilities for which the publicly funded share has been assured, development approvals have been sought or construction contracts have been let.

B. When the county seeks to terminate any or all impact fee requirements under this section, all unexpended or unencumbered funds, including interest earned, shall be refunded in accordance with RCW 82.02.080(2).

C. Refunds provided for under this section shall be paid only upon submission of a proper claim pursuant to county claim procedures. Such claims must be submitted within one year of the date the right to claim the refund arises, or the date that notice is given, whichever is later.

Section 12. Reimbursement for administrative costs, legal expenses, and refund payments. Each participating school district shall enter into an agreement with the City for reimbursement of the actual administrative costs of assessing, collecting and handling fees for the district, any legal expenses and staff time associated with defense of this chapter against district-specific challenges, and payment of any refunds provided under Section 11 of this Ordinance.

Section 13. Administrative adjustment of fee amount.

A. Within 14 days of acceptance by the City of a building permit application, a developer or school district may appeal to the director for an adjustment to the amount of or an elimination of fees imposed under this chapter by submitting a written explanation of the basis for the appeal. The planning and community development director may adjust the amount of or eliminate the fee, in consideration of studies and data submitted by the developer and the affected school district, if one of the following circumstances exists:

1. The school impact fee assessment was incorrectly calculated;

2. Unusual circumstances exist that demonstrate the school impact fee is unfair as applied to the specific development;

3. A credit for in-kind contributions by the developer, as provided for under Section 7 of this Ordinance, is warranted;

4. Any other credit specified in RCW 82.02.060(1)(b) is warranted; or

5. The school impact fee assessment was improper under RCW 82.02.020 or RCW 82.02.050 et seq.

B. To avoid any delay pending resolution of the appeal, school impact fees may be paid under written protest in order to obtain development approval. Such written protest must be submitted at or prior to the time fees are paid, and will relate only to the specific fees identified

in the protest. Failure to provide such written protest at the time of fee payment shall be deemed a withdrawal of any appeal to the director.

C. Failure to file a written protest and to seek a timely appeal to the director shall preclude any appeal of the school impact fee pursuant to EMC Chapter 15.24.

D. Refunds approved under this section, or following an administrative appeal as provided in EMC Chapter 15.24, shall be made to the current property owner at the time the refund is authorized, unless the current property owner releases the county and the school district from any obligation to refund the current property owner.

E. The developer or the school district may appeal the director's decision as provided in EMC Chapter 15.24.

Section 14. Appeals of decisions - procedure.

A. Any person aggrieved by a decision to impose, impose modifications, or waive an impact fee under this chapter may appeal the decision to the hearing examiner. Where there is an administrative appeal process for the underlying development approval, appeals of an impact fee under this chapter must be combined with the administrative appeal for the underlying development approval. Where there is no administrative appeal for the permit, then appeal of the impact fee shall proceed as a Type 1 appeal pursuant to EMC chapter 15.24. Appeals shall be limited to application of the impact fee provisions to a specific development.

B. The impact fee may be modified or refunded upon a determination based on the application of the criteria contained in Section 13 of this Ordinance.

Section 15. Arbitration of disputes.

With the consent of the developer and the affected district, a dispute regarding imposition or calculation of a school impact fee may be resolved by arbitration.

Section 16. Severability. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 17. Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

Section 18. Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of

scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

Section 19. General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Ray Stephanson, Mayor

ATTEST:

CITY CLERK

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